**MAXINE WATERS**
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# Congress of the United States
## House of Representatives
## Washington, DC 20515–0535

PLEASE REPLY TO:
WASHINGTON, DC OFFICE
2344 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–0535
PHONE: (202) 225–2201
FAX: (202) 225–7854

DISTRICT OFFICES:
LOS ANGELES OFFICE
10124 SOUTH BROADWAY
SUITE 1
LOS ANGELES, CA 90003
PHONE: (323) 757-8900
FAX: (323) 757–9506

November 30, 2010

NBC Comcast / NBC Merger
1828

Julius Genachowski
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Dear Chairman Genachowski,

As a Member of the U.S. House of Representatives Committee on the Judiciary, I write to once again convey my ongoing concerns about the impact the Comcast-NBC merger could have on consumers and competition within the already heavily-consolidated media industry. If Cablevision's recent retransmission dispute with News Corporation (News Corp.) over the fees it pays the media conglomerate were not compelling enough, then three recent direct allegations against Comcast Corporation's online and cable operations should warrant the Federal Communications Commission's (FCC) close examination. Although the Commission's 180-day merger review deadline passed on November 25th, I urge the FCC to carefully review these new allegations, along with the voluminous record of the current merger proceeding, and ensure that if the Comcast-NBC combination is approved, it is conditioned upon substantive commitments that will promote media diversity, competition, and consumer protections.

First, the New York Times reported this week that Comcast Corporation – which has its own on-demand content streaming and pay-per-view movie services – imposed a recurring fee on Level 3 Communications (the backend service provider that streams Netflix movies to online consumers) in exchange for allowing the company to continue streaming Netflix content to consumers without service disruption. Comcast reportedly threatened to cut its customers' access to Netflix unless Level 3 pays a new fee for the transmission. In efforts to justify the action, the company contends that Netflix consumes a significant amount of its online traffic and should be assessed higher fees than a low-bandwidth online site. This was undoubtedly one of the principle reasons behind their decision to block online peer-to-peer file sharing site BitTorrent – an action the company denied before the Commission discovered Comcast had indeed limited Internet users' access to the website.

While Comcast's argument has some merit – sites such as Google's YouTube and Netflix consume more network traffic than a "MomAndPop.com" – the implications and dynamics change once the colossal cable operator and Internet Service Provider (ISP) in question stands to gain ownership over all of NBC Universal's online, cable, and motion picture properties. The FCC should also consider this recent development in light of Comcast's launch of "XFinity" this year – the corporation's own movie streaming service. There are currently no regulatory standards in place that could prevent Comcast from driving out competing online services in order to offer its own content streaming site with a new full catalog of Universal Pictures, Focus

Features films, NBCU cable shows (NBC, Bravo, SyFy, and Style), and other online content offered through Hulu.

Comcast Corporation has 23 million cable customers and provides Internet service to 15 million Americans. In this context, Netflix was compelled to pay the fee so that its customers would avoid service interruptions. Ironically, this illustration parallels the recent dispute between Cablevision and Newscorp. In the same way that cable customers lose service when cable operators are unable to reach an agreement with broadcasters, online customers lose access to broadband service (or the quality of that service) when ISPs and online content providers fail to reach a contractual agreement. In my estimation, each of these disputes hinge on market leverage and dominance. The stakes favor the company that can exert greater pressure, and Comcast stands to gain an unprecedented amount of market power under the proposed merger. In any case, the customer is held hostage, and if Comcast gains control of NBC Universal, we do not fully understand the potential impact the merged entity will have on the market. However, we do know that cable prices will continue to increase and customers will continue to suffer periodic service disruptions (such as the unprecedented Comcast Internet service outage that impacted millions of customers along the eastern United States on November 29th) and blackouts caused by corporate retransmission disputes.

Secondly, the Commission must also consider the Tennis Channel's very serious allegations that Comcast provides its own networks and content with preferential treatment. The Tennis Channel claims that Comcast favors its own similarly situated networks, such as Versus Network and the Golf Channel, by placing them on more widely-viewed tiers. The complaint stems from Comcast's decision to keep the Tennis Channel on a premium sports tier rather than a more broadly distributed programming tier. In the same manner that public interest groups have raised concerns that the company could discriminate against competing online services through predatory pricing schemes, competing cable networks may also suffer under similar anticompetitive practices. Since the two companies were unable to reach an agreement in mediation, the claims will now be heard before one of the Commission's judges.

Lastly, on November 29th, modem manufacturer Zoom Telephonics filed a complaint at the Commission against Comcast. The complaint outlines a string of facts alleging that the cable operator is restricting consumer access to innovative devices by controlling the approval process for cable modems. Similar to the Tennis Channel complaint, this allegation reflects a pattern and practice of anticompetitive business practices. While the FCC has yet to announce the hearing date for the Tennis Channel's complaint, and we do not know whether Zoom's complaint will be heard before an FCC judge, I do not believe the Comcast-NBC merger should be approved before the facts and details of both allegations are fully disclosed to the public.

I do hope you and the Department of Justice (DOJ) will consider the very serious public interest concerns outlined above while conducting your Comcast-NBC merger review.

Sincerely,

Maxine Waters

Maxine Waters
Member of Congress

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

December 16, 2010

The Honorable Maxine Waters
U.S. House of Representatives
2344 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Waters:

Thank you for your follow-up letters regarding the Commission's review of the proposed joint venture between Comcast Corporation and the General Electric Company subsidiary, NBC Universal, Inc. (NBCU), as well as the recommendations of the Advisory Committee on Diversity for Communications in the Digital Age. Your views are very important and your correspondence will be included in the record of the proceeding.

I agree that an important part of the Commission's analysis of the proposed Comcast-GE transaction is the careful evaluation of the effect that the proposed transaction may have on minority participation, competition, and the distribution of content in the communications industry. As you discuss in your correspondence, the applicants have proposed a number of public interest commitments that they indicate will promote diversity of ownership and programming content. The Commission is looking closely at those voluntary commitments, as well as other constructive ideas to foster increased diversity throughout the communications landscape. Please be assured that the issues discussed in your letter will be considered carefully as part of the Commission's independent review of the proposed Comcast-GE transaction.

In terms of the various recommendations offered by the Advisory Committee, the Commission is hard at work evaluating each and every one, and has already addressed many of the Committee's thoughtful suggestions. I have also announced recently the rechartering of the Committee for 2011-2012.

I appreciate your interest in these important matters. Please let me know if I can be of further assistance.

Sincerely,

Julius Genachowski